PROGRESS REPORT TO THE GENERAL ASSEMBLY ON THE DEVELOPMENT OF COMPETITION IN ELECTRIC MARKETS AND THE IMPACT ON RETAIL CUSTOMERS

Submitted by the Arkansas Public Service Commission
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TABLE OF CONTENTS

EXECUTIVE SUMMARY

This Report is submitted in accordance with the Electric Consumer Choice Act of 1999, specifically Ark. Code Ann. §23-19-107(a), which requires the Arkansas Public Service Commission ("Commission" or "PSC") to make annual reports to the General Assembly on the development of competition in retail electric markets and the impact of restructuring on retail ratepayers. In preparation for this Report, the Commission initiated a proceeding to provide a mechanism for all interested parties to address certain questions about the status of retail open access ("ROA") in Arkansas. These questions related primarily to the development of wholesale and retail electric markets in this region, including information regarding generation price estimates for each year from 2002 to 2010 for both retail and wholesale markets. Responses to these questions were submitted by all Arkansas electric utilities, the Attorney General, industrial customers, the Commission's General Staff, and many Arkansas municipalities. In addition to the comments and data provided in this Docket, the Commission has closely followed developments in other regions of the country including, but not limited to, the problems encountered in some parts of the California markets as well as other states in the West and the Northeast, the price fluctuations in the natural gas markets, and developments regarding RTO issues.

The Commission convened a hearing on October 11, 2000, and stated that, based on the comments received, it was apparent that many of the parties believed that the statutory timeframe for implementing ROA was too early. Specifically, the Commission noted that the current timeframe in Act 1556, which would require ROA to begin no sooner than January 1, 2002, and no later than June 30, 2003, would not provide sufficient time to allow the development of market structures that could support a competitive, fully functioning retail market for electricity, and would not provide a reasonable opportunity for all consumers to realize net benefits from competition.

At the conclusion of the hearing, the parties began a collaborative process to work toward proposed legislative modifications to Act 1556. The objective was to develop a proposal that would provide the Commission with sufficient implementation flexibility to ensure that the Commission's two-pronged ROA "readiness" test, consisting of a competition-ready market structure and a net public interest standard, could be satisfied.

The collaborative discussions resulted in proposed modifications to Act 1556 that were agreed to by Entergy Arkansas, Inc., Southwestern Electric Power Co., Oklahoma Gas & Electric Co., Empire Electric District Electric Co., and General Staff. Those parties recommended that the statute be revised at this time to target an ROA implementation timeframe of no earlier than October 1, 2003, and no later than October 1, 2005. The Arkansas Municipals filed comments stating they have "no objections to the [proposed timeframe delay] and will support its implementation, asserting in a strong fashion that it is in the best interests of the entire State of Arkansas, including Arkansas Municipals." The industrial customer group (AEEC) filed a letter stating that they will not oppose this change in the timeframe. The Attorney General's office and electric cooperative companies proposed a later implementation timeframe.

The Commission believes that the modifications to Act 1556 contained in the Joint Agreement resulting from the collaborative process (Attachment C) provide an appropriate foundation for the Commission's recommendation to the 83rd Session of the General Assembly. The Commission therefore recommends that Act 1556 be amended to require that ROA begin no sooner than October 1, 2003, and no later than October 1, 2005, with the Commission being authorized to determine the appropriate ROA date within this timeframe. The Commission believes that this extension of the transition period is the appropriate window to provide a practical opportunity for the Commission's two-part "readiness" test to be met, as well as to address some of the corollary issues including adequacy of generating capacity and industrial customer concerns. A reasonable implementation window needs to exist as a target date for purposes of providing investment and planning direction to the market participants, both regulated and non-regulated. If they have not already done so, the electric utilities must now make decisions regarding acquisition of additional generation capacity. Transition plans need to be developed and large customers have equivalent energy planning decisions to make. In addition to satisfying these particular needs, the extension to an October 2003 to October 2005 time period will provide the benefit of encompassing two additional legislative sessions in 2003 and 2005 during which the market and structural issues, along with the appropriate timing of ROA, can continue to be evaluated and modified if necessary.

The Commission continues to believe that the statutory framework embodied in Act 1556 is an appropriate one to transition from regulated to competitive electric generation service. However, to ensure the greatest likelihood of being able to achieve net consumer and economic benefits with electric restructuring, the Commission's recommended amendments are necessary to ensure that sufficient review opportunities and implementation time are available to achieve that goal.

INTRODUCTION

The Electric Consumer Choice Act of 1999, Act 1556 of 1999, requires the Commission to provide the General Assembly with reports on the progress of the development of competitive electric markets in Arkansas and the impact of restructuring on retail customers in the State. The PSC is required to file the first report before January 15, 2001. Specifically, the report is to include:

> (1) An assessment of the impact of competition on the rates and availability of electric service for each class of retail customers in each allocated service territory, including, but not limited to, the extent of customer choice with regard to each customer class in each service territory, or in such other smaller units as may be determined by the commission;
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> (2) A summary of commission actions over the preceding two (2) years that reflect changes in the scope of competition in regulated electric markets;
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> (3) An analysis of the effect, if any, of competition on the reliability of the electric system and on the quality of service provided to customers; and
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> (4) Recommendations to the General Assembly for further legislation that the commission finds appropriate to promote the public interest in a competitive electric market.[1]

In order to develop the necessary information for this report, the Commission initiated Docket No. 00-190-U on July 19, 2000. Order No. 1 in this docket asked the parties to address a number of issues pertaining to the retail electric market, the wholesale market, and the relative costs and benefits of competition. The questions asked by the Commission are included in this report as Attachment A. The following entities participated in Docket No. 00-190-U: Empire District Electric Co. ("Empire"), Southwestern Electric Power Co. ("SWEPCO"), Arkansas Electric Energy Consumers, Inc. ("AEEC"),

[1] Ark. Code Ann. §23-19-107(a).

the Electric Distribution Cooperatives[2] ("Coops"), Nucor-Yamato Steel Co. and Nucor Steel-Arkansas ("Nucor"), Oklahoma Gas & Electric ("OG&E"), the General Staff of the Commission ("Staff"), Entergy Arkansas, Inc. ("EAI"), the Attorney General of the State of Arkansas ("AG"), Arkansas Electric Cooperative Corporation ("AECC"), the Arkansas Municipals[3], Enron Energy Services ("Enron"), and Reliant Energy, Inc. ("Reliant").

In addition to the responses and information provided through this proceeding, the Commission has stayed abreast of restructuring-related activity throughout other parts of the nation. The Commission has also been monitoring the changes in the price of natural gas and the activities surrounding electric transmission related issues. The Commission will continue these activities in order to ensure that consumers in Arkansas benefit from lessons learned in other regions.

[2] Arkansas Valley Electric Cooperative Corporation, Ashley-Chicot Electric Cooperative Incorporated, C&L Electric Cooperative Corporation, Carroll Electric Cooperative Corporation, Clay County Electric Cooperative Corporation, Craighead Electric Cooperative Corporation, Farmers Electric Cooperative Corporation, First Electric Cooperative Corporation, Mississippi County Electric Cooperative, Incorporated, North Arkansas Electric Cooperative, Incorporated, Ouachita Electric Cooperative Corporation, Ozarks Electric Cooperative Corporation, Petit Jean Electric Cooperative Corporation, Rich Mountain Electric Cooperative, Incorporated, South Central Arkansas Electric Cooperative, Incorporated, Southwest Arkansas Electric Cooperative Corporation, and Woodruff Electric Cooperative Corporation.

[3] Comprised of the City of Benton, Arkansas; City of Bentonville, Arkansas; Clarksville Light & Water Company; Conway Corporation; Hope Water and Light Commission; City Water & Light Plant of Jonesboro, Arkansas; City of North Little Rock, Arkansas; City of Osceola, Arkansas; Paragould Light & Water Commission; City of Piggott, Arkansas; City of Prescott, Arkansas; City of Siloam Springs, Arkansas; and, West Memphis Utilities Commission.

RESPONSES TO COMMISSION QUESTIONS

Retail Electric Market

Staff's responses to the Commission's questions on the retail electric market were based on studies provided by LaCapra and Associates ("LaCapra Study"). Those studies estimated that customers would pay higher generation costs under competition than under continued regulation for the foreseeable future. Therefore, Staff asserted that it would not be in the public interest to implement ROA under the current timetable for generation competition. Staff recognized that a delay may result in some hesitance on the part of potential market entrants to enter the Arkansas market, but concluded that the projected immediate economic impact on consumers did not warrant moving quickly to competitive markets. Staff proposed that the Commission should recommend an amendment to Act 1556 which would delay implementation of ROA and give the Commission discretion in setting the appropriate date for open access.

The AG also advocated that open access be delayed. The AG stated it would be difficult to meet the current schedule required by Act 1556. The AG also asserted that the assumptions regarding prices that were used to develop Act 1556 have changed somewhat since the enactment of Act 1556.

The distribution cooperatives and their wholesale parent company, AECC, recommended an indefinite delay in ROA implementation . They maintained that there must be an effectively operating wholesale market before the retail market is opened. AECC noted that the three most important elements for effective generation competition are not currently in place: (1) an effective wholesale structure; (2) adequate reliability; and, (3) retail consumer safeguards and appropriate utility infrastructure.

Nucor similarly argued that the Commission should not recommend meeting the current deadline unless the market structure can be reasonably expected to work.

EAI, OG&E, and SWEPCO argued in their initial responses that it is unnecessary to change the current implementation date for retail access. They stated that a delay in ROA implementation would only delay the economic and other benefits which retail access can provide. In their view, delay will discourage the entry of new generation providers which could exacerbate possible price swings when retail open access does begin. EAI maintained that all necessary consumer protection and market structure vehicles, including an effective Regional Transmission Organization ("RTO"), will be in place in time to meet the target implementation date of January 1, 2002. SWEPCO added that there may be some risks but that those risks can be minimized. SWEPCO believed that deregulation of the generation industry should produce savings of 0.5¢ to 1.0¢ per kWh.

Wholesale Electric Market

The Commission's questions on the wholesale electric market focused on the anticipated time required for the development of an effectively competitive wholesale market, including the implementation of consumer protection measures, a projection of annual prices in the wholesale market until 2010, and an assessment of whether wholesale competition alone would produce the majority of any potential efficiencies and cost savings. The Commission also requested information on the schedule for compliance with the Federal Energy Regulatory Commission's ("FERC") order for implementing an RTO for this region.

An RTO is an organization or business formed to operate a regional transmission system. Its purpose is to separate utilities' transmission functions from their generation functions in order to prevent use of the monopoly transmission system to favor competitive generation affiliates. An RTO may take many forms, but the two most prevalent are the Independent System Operator ("ISO") and the Independent Transmission Company ("Transco"). An ISO is a non-profit organization whose members include most if not all market participants, including for-profit transmission owners. A Transco is a for-profit company that manages its own transmission system and/or those of other Transco participants. The FERC, in its landmark Order No. 2000[4], has directed its jurisdictional transmission-owning utilities to file for approval of the transfer of their facilities to an RTO, or describe its plans to do so, by October 16, 2000. Additionally, Act 1556 requires that Arkansas' transmission-owning utilities transfer operation of their transmission systems to an independent operator before ROA is implemented.[5]

In response to the questions about RTO formation, all of the electricity providers seemed to support the efforts of the Southwest Power Pool ("SPP") to form an RTO.[6] They noted that the SPP would file its RTO proposal at FERC in October, 2000. They also asserted that an RTO which includes Arkansas will be in operation by December 15, 2001. EAI stated that it intends to establish a Transco to operate its transmission system as well as those of possible partners. However, it is participating in the SPP RTO process in the expectation that the Transco will participate in the SPP RTO.

EAI and AECC both noted that there are other matters that should be resolved in order to effect wholesale competition. One is a proceeding at the FERC involving the Entergy System Agreement. The System Agreement is a wholesale rate schedule which allocates costs (other than the costs of Entergy's Grand Gulf nuclear plant) among the five Entergy Operating Companies ("EOCs").[7] The issue before the

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[4] *Regional Transmission Organizations,* 18 CFR Part 35, 89 FERC ¶61,285 (December 20, 1999).

[5] Ark. Code Ann. §23-19-103(g)

[6] The SPP is a non-profit corporation that currently serves as a regional reliability council. It is not a utility, although many of its members are.

[7] The operating companies are EAI, Entergy Gulf States ("EGS") Inc., Entergy Louisiana, Inc. ("ELI"), Entergy Mississippi, Inc. ("EMI"), and Entergy New Orleans, Inc. ("ENO").

FERC is how the System Agreement should be amended to accommodate the transition to competition. Additionally, EAI and AECC observed that the market power proceedings filed at the Commission pursuant to Act 1556[8] may affect the development of competitive markets. AECC went further in its response by advocating that the PSC have the authority to delay ROA until a regional transmission entity is both approved and functioning. The General Staff's consultant, LaCapra and Associates, noted that it generally takes a few years to develop a fully functioning RTO.

Many parties stated that concerns about California-like experiences in Arkansas can be avoided because the market circumstances in the two states are very different. They noted that the high prices experienced in California reflect supply and demand conditions that are unique to that state and that entry into the generation market in Arkansas is easier than in California. Another difference noted by the parties was that the California restructuring legislation required the creation of a mandatory power exchange; in contrast, Act 1556 leaves the development of such exchanges to the market. The parties also pointed out that the use of tools such as hedging and long-term contracts, which were not initially allowed in California, should prevent price spikes of the level seen in that state. EAI also noted that the standard service package for small customers will mitigate price volatility. Similarly, Nucor stated its belief that demand-responsive pricing will act as a hedge against price volatility in wholesale markets.

Most of the information submitted as to wholesale market prices was proprietary. However, AECC and Staff both supplied nonproprietary estimates. AECC estimated that, from 2002 until 2010, prices in the wholesale market would increase from $40.6 MWh to $51.4 MWh. Staff provided a range

[8] Ark. Code Ann.§ 23-19-404

of high, low and 'base case' projections. The base case projections range from $28.58 MWh to $40.14 MWh.[9]

Comparison of Benefits of Wholesale Competition and Retail Competition

The last series of questions posed by the Commission related to the comparative benefits to consumers of wholesale and retail competition. Most of the parties agreed that wholesale competition can provide some but not all of the benefits that consumers will realize when ROA is implemented. EAI noted that putting wholesale competition in place will require completion of many of the same tasks that are required by retail competition and that there are efficiency gains from addressing both markets comprehensively. The Investor Owned Utilities[10] ("IOUs") indicated that prices to consumers in the retail market should be lower in the long run through competition. SWEPCO added that price benefits will accrue to consumers through wholesale competition and that retail competition will bring additional benefits such as the introduction of new technology and customized pricing, as well as improved reliability.

Nucor argued that a competitive wholesale market does not provide the incentives necessary for a distribution utility to minimize the cost to serve captive retail customers. It also argued that wholesale markets fail to provide customers with competitive retail choices. Similarly, Staff stated that wholesale and retail competition are not direct substitutes and do not produce the same benefits to consumers. Over time, wholesale competition should provide lower costs and greater efficiency. Retail competition can offer pricing options, source options, and payment in-service options.

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[9]A table containing these estimates can be found in Attachment A to this Report.

[10]EAI, SWEPCO, OG&E, and Empire.

THE COLLABORATIVE PROCESS

Initiation of the Process

On October 11, 2000, the Commission convened a hearing to initiate a collaborative process to develop possible recommendations to the General Assembly for amendment of Act 1556. At that time, the Commission provided guidance to the parties as to the desired focus of the discussions that would begin following the adjournment of the hearing.

Speaking for the Commission, the Chairman stated that the Commission, in preparing for this Report to the General Assembly, had felt it appropriate to encourage interested parties to provide their input in the development of this Report.[11] The Chairman continued by sharing the Commission's overall concerns and initial observations, based on the comments filed in Docket No. 00-190-U, as well as the Commission's observations of the developments in, and experiences of, other states across the country. The Chairman observed that:

> [b]ased on the Commission's review of the parties' comments and supporting cost estimates, it would appear that there is a substantial amount of agreement on specific areas of concern pertaining to our electric restructuring timeframe. For various reasons <u>the comments of many of the parties advocate extending the transition to retail open access.</u>

Specifically, the Chairman pointed out that all of the parties that responded to the Commission's questions, with the exception of the IOUs, advocated an extension of the time for opening the market for retail competition in Arkansas.[12] The Chairman also noted Nucor's recommendation that the Commission

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[11]The comments of the Chairman which were provided at this hearing are included in their entirety as Attachment B.

[12]Although AEEC participated in Docket No. 00-190-U, they did not file comments.

not recommend meeting the current deadlines unless there is a reasonable expectation that the market will work to benefit consumers.

The Chairman stated that the Commission is firmly committed to supporting competition in utility services that can be provided in a truly competitive environment and believes that the existing framework of Act 1556 continues to be one of the best electric restructuring statutes in the country. However, the Chairman noted concerns about the possible effect of maintaining the existing timeframe for implementing ROA in Arkansas.

The Chairman observed that there are two general and overriding concerns about the existing timeframe in Act 1556. The first is a recognition of the "need for the overall structure and framework to be in place to facilitate a workably competitive market." This includes the prerequisites for effective competition having been in place long enough "to produce a workably competitive retail market." The second concern is that "the net public interest [should] be served by going forward with retail competition." In this context, "net public interest" means that all customer classes should have a reasonable chance of realizing price as well as non-price benefits.

The Chairman closed her comments by stating that it is unlikely that the necessary market structure will be established and in place long enough to show such net public interest benefits under the deadlines currently required by Act 1556: "In other words, keeping the timing status quo of the legislation as it was written 18 months ago is not a viable option." The Chairman noted that changing the timing of implementation by including a "window" has appeal insofar as it would afford the Commission with the necessary flexibility to determine when the two-pronged test is most likely to be met as the market conditions become better known and measurable.

Following the Chairman's statement, Commissioner Bratton noted that the Commission's concerns about timing should not be interpreted as a concern about whether or not Arkansas should move forward to retail competition. In closing, Commissioner Bratton stated:

> [T]o the extent that this group and the Commission can be united in making a presentation to the General Assembly regarding an extension of the transition period, ...I think that will greatly allay some of the legislative concerns ... and will give us the opportunity to get where we all think we need to go.

The Commission then recessed the hearing to allow discussion among the parties and directed them to report on the progress of their efforts to the Commission on the following day.

<u>Results of Collaborative Process</u>

At 4:00 p.m. the following day, the hearing was reconvened for the parties to advise the Commission of the progress of their discussions. The Executive Director of the Commission General Staff reported that progress on a settlement involving many of the parties had been made. He then outlined the status of the proposal.

> The proposal that is before us all is to simply extend the dates for retail open access embodied in the legislation currently and change all other dates within the Act consistently with moving the initial implementation date out and moving the actual end date to implement retail open access. All the other dates in the Act would follow those proportionally to their current relationship.
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> Our suggestion is, that the initial implementation date for retail open access be moved from January 1, 2002, to October 1st, 2003, and that the Commission be given discretion to extend the date for retail open access implementation from the current date of June 30th, 2003, to October 1st, 2005. And so it's – the window for the implementation of retail open access would be October, 2003, and October 2005. And the Commission would have the discretion to move that date up to two years in a minimum of annual increments.

He noted that the parties were discussing a number of other issues associated with ROA implementation. The Executive Director stated that the parties would continue working toward putting recommendations in the form of modified legislation to be submitted to the Commission as part of a settlement proposal. He requested that the parties be granted additional time to complete their discussions.

On October 20, 2000, a Joint Agreement ("Agreement") was reached among Staff, EAI, SWEPCO, OG&E, and Empire. The Arkansas Municipals filed comments stating they have "no objections to the Joint Agreement, and will support its implementation, asserting in a strong fashion that it is in the best interests of the entire State of Arkansas, including Arkansas Municipals." Both Nucor and AEEC advised they did not object to the Agreement. Comments on the Agreement were filed that same day.

The Agreement states that the recommendation was to amend the Act:

> such that the earliest implementation date for retail open access in Arkansas be moved from January 1, 2002 to October 1, 2003. The Parties further recommend that the Commission be given the discretion to extend the implementation of retail open access through October 1, 2005 in increments of up to twelve months pursuant to Ark. Code Ann. § 23-19-103 (a). The dates in the legislation tied to the date for retail open access should be extended proportionally with the extension of the implementation date for retail open access.[13]

The parties to the Agreement also agreed to convene by January 25, 2001, to address other issues characterized as 'transition' issues. These include generation and transmission capacity needs, questions regarding cost recovery procedures, and competitive options for large industrial customers.

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[13] The Agreement excepts from this requirement " the dates that will have occurred by the time of the 2001 regular session of the Arkansas General Assembly, such as the dates for filing unbundled tariffs and rates and market power analyses."

The Commission believes the Agreement provides an appropriate foundation for the Commission's recommendation to the 83rd Session of the General Assembly. The Commission's recommendation, based in large part on that agreement, is that Act 1556 be amended to require that ROA be implemented no sooner than October 1, 2003 and no later than October 1, 2005.[14] In addition, the Commission is recommending modification to the timing language pertaining to the filing of market power studies and implementation of mitigation remedies. These recommendations are discussed in more detail at the conclusion of this report.

THE JOINT AGREEMENT

Only the AG and the electric cooperative companies oppose the Agreement. The AG's comments recommend that restructuring plans should be delayed and that steps should be taken to assure an adequate electricity supply prior to competition. The AG proposes that restructuring should be delayed until at least 2005 and should be implemented only if there are clear benefits to ratepayers.

The Coops' position is similar to that of the AG. They state that the Commission should recommend that Act 1556 be amended to establish October 1, 2005 as the earliest date for ROA. They recommend that the Commission have the authority to delay ROA in one year increments until April 1, 2007. Turning to the Agreement itself, the Coops state that it should include a provision to delay ROA until (1) a competitive market exists and (2) there is a chance for most consumers to realize cost savings from a competitive electricity market.

[14] The AG and the Coops support a start date not sooner than 2005.

In support of the Agreement, EAI states that it is inappropriate to set the earliest possible date for the start of ROA beyond October 1, 2003. It notes that, if more time is needed to implement ROA, the General Assembly can revisit the timing issue during the legislative sessions in 2003 or 2005. EAI states that a longer delay in ROA implementation would make planning by both electric utilities and their customers more difficult. It also argues that the PSC should not support legislative recommendations that include issues that do not have to be addressed now and are not accepted by the majority of the parties. EAI says that the Commission's making such recommendations could jeopardize efforts to prepare a viable set of amendments agreed to by a large number of interested parties.

Empire states that the Agreement takes into account the various interests involved in a decision to postpone Arkansas' move to ROA. It takes the position that the Agreement strikes an appropriate balance of the interests of the different parties.

In response to the AG's and the Coops' objections to the Agreement, SWEPCO notes that the sole basis for the longer delay that they advocate is the LaCapra Study filed by Staff. SWEPCO points out that the LaCapra Study has not been subjected to cross-examination and that the AG's and Coops' reliance on it is therefore misplaced.

OG&E also responded to the AG's position recommending an ROA date of October 1, 2005. OG&E points out that, if all of the conditions are met for ROA prior to that time, it makes no sense not to allow customers to benefit prior to 2005.

Nucor states that the Agreement may be reasonable given the uncertainty about the timeframe for addressing RTO formation, market power issues, and the availability of tools to deal with market volatility.

However, it also states that any delay beyond January 1, 2002, should reflect the minimum time necessary to develop workably competitive markets. Nucor also argues that adoption of the October 2005 ROA date advocated by the Coops and the AG would create unnecessary delay. It recommends that if ROA is delayed until October 1, 2003, the PSC should take full advantage of this delay to address critical market structure, planning, and pricing issues. In particular, Nucor wants the Commission to ensure that during any delay consumers are not saddled with short-term fixes for long-term capacity needs.

REPLIES TO THE INITIAL RESPONSES TO PSC QUESTIONS

Following the collaborative process, the parties to Docket No. 00-190-U were also given the opportunity to respond to one another's initial responses to the Commission's questions. Many of the parties took this as an opportunity to reiterate their initial position regarding the date for ROA. Based on the LaCapra Study filed by Staff, the AG argued that there are numerous concerns over adverse rate impacts due to ROA, including that the marginal cost of new generation is higher than average cost and that the cost of new gas generation is relatively high. According to the AG, these factors create a possibility that consumers will not benefit from ROA in the near future. The AG also argues that it is critical to have a well-functioning transmission structure and a competitive wholesale market before a market is opened for ROA and that restructuring efforts should primarily concentrate on mechanisms to facilitate eventual wholesale competition.

In their responsive comments, the Coops state that the LaCapra Study does not contain any basis for a start date as early as October 1, 2003. They also voice their support for the AG's recommendations.

OG&E filed testimony responding to the LaCapra Study submitted by Staff. This testimony points out that "any long-range forecast of competitive prices using static assumptions is necessarily inaccurate and may give a false sense of security about future events." OG&E also notes that "projecting prices in regulated and deregulated markets out 10 years is a risky business at best. Beyond 4 or 5 years the only certainty that exists regarding the forecast numbers is that they will be incorrect." OG&E's testimony additionally notes that the Commission correctly realizes that an analysis of retail competition must consider the dynamic nature of competitive markets.

In its response to the Coops, SWEPCO points out that the Coops fail to analyze the effects of their recommended delay, which include price benefits and non-price benefits to customers that will be lost. SWEPCO states that there is also a dampening effect on investment for new capacity construction due to the increase in regulatory uncertainty. SWEPCO also points out that the LaCapra Study has not been subjected to cross-examination.

AEEC also takes exception to the LaCapra Study. In testimony filed by their witness, Randall J. Falkenberg, AEEC argues that Staff and the AG seem to dwell on events in California while ignoring the positive results of retail competition in Pennsylvania. Falkenberg also testifies that the conditions in Arkansas are not like those in California. He notes that the LaCapra Study assumes high retailing costs[15] which, in turn, drive the Study's conclusion that competitive generation prices will be higher than regulated rates. Specifically, Falkenberg criticizes LaCapra's estimates of retailing costs because they are higher than the retailing cost estimates used by EAI and by the Public Utility Commission of Texas ("PUCT").

[15] Retailing costs are the cost of selling at retail, such as advertising and marketing.

LaCapra used a cost of $.01/kWh whereas EAI used $.0024 and the PUCT used a zero rate for such costs. Falkenberg argues that if the biases in the LaCapra Study are "removed, it shows EAI residential customers will benefit from competition."

Falkenberg further notes that delay in moving to ROA increases regulatory uncertainty which leads to increased costs and reduced investment. Falkenberg also argues that the LaCapra Study assumes that a competitive market can never be as efficient as a regulated one and that regulation will not be perfectly efficient.

RECOMMENDATION TO THE 83RD SESSION OF THE GENERAL ASSEMBLY

The Commission believes that the parties to this Docket have provided helpful information and analysis that has aided in the Commission's development of a recommendation to the General Assembly. Although the parties to the discussions have taken slightly different positions on the appropriate timeframe to implement ROA, no party currently contends that the current ROA timeline should be maintained.

The Commission believes that the timeline extension proposed by a majority of the parties participating in the collaborative process represents an appropriate balancing of the need to move forward to developing competitive generation markets for electricity with the need to make sure that all necessary and appropriate mechanisms are in place to provide the opportunity for net benefits to be available to all ratepayers. Accordingly, the Commission recommends that Act 1556 be amended to, (1) require that ROA be implemented no earlier than October 1, 2003, and (2) that this date may be extended by the Commission in increments of up to twelve months but not later than October 1, 2005. Other dates in the statute should be modified proportionately. In addition, the Commission recommends modification to the existing timing language pertaining to the filing of market power studies and implementation of mitigation remedies. Those changes are reflected in Attachment D.

There are several considerations that form the basis of the Commission's conclusion that January 1, 2002, is not a feasible date for implementation of retail open access in Arkansas. The information supplied to the Commission in the parties' comments and in the responses to those comments is an important factor in that decision. The publicly available estimates in these comments indicate that regulated rates for generation are likely to be lower than competitive generation prices at least in the short-term. The Commission recognizes that these are projections of future events based on current assumptions and are therefore unlikely to be precisely accurate. However, the Commission cannot ignore the possibility that these estimates may prove reasonably accurate, at least for the next few years. The timeframe contemplated by the Agreement will allow ratepayers to enjoy the lower, regulated generation rates during that short-term. It will also continue to require the implementation of measures that will allow ratepayers to enjoy the benefits of competitive generation prices in the long-term. Further, the proposed timeline will allow Arkansas to learn from the experiences of other regions where retail competition has been implemented, and to apply those lessons, when appropriate, to the framework and implementation process here in our state.

Another factor in the Commission's recommendation is the timing of the development of wholesale electric competition in this region. The Commission is convinced that a workably competitive wholesale generation market is a prerequisite to the effective functioning of retail generation competition. However, the Commission is concerned about the increasing likelihood that implementation of the FERC decisions necessary to the development of wholesale competition in this region will not have occurred in time to implement ROA in the current timeframe.

Although EAI and the other IOUs believe that all necessary FERC decisions will be in place in time to begin ROA by January 1, 2002, the Commission is less sanguine. With respect to RTO development, the Commission notes that both Entergy and the SPP filed RTO applications at the FERC in mid-October. However, SWEPCO, OG&E, and Empire, all of which own transmission facilities in Arkansas, have chosen to delay filing their RTO applications. Instead, they have advised the FERC that they will join the SPP RTO *if* its application is approved without alteration. If it is not, they have stated that they will explore other options for RTO membership. Thus, SWEPCO, OG&E, and Empire may not even have decided which RTO they will seek to join in time to implement ROA by January 1, 2002.

With respect to Entergy and the SPP, the Commission commends the hard work and commitment that resulted in their timely RTO filings at the FERC. However, the Commission must also note that there remains much work to accomplish before their plans can be implemented. The "Partnership Agreement" which will form the basis of the Entergy Transco's participation in the SPP RTO cannot be consummated unless and until Entergy and the SPP are able to agree on certain key, complex transmission pricing mechanisms. Additionally, Entergy must make filings with this Commission and its other retail regulators to obtain approval of the transfer of its transmission facilities to the Transco. It is simply not reasonable to expect that all of these tasks will have been completed and that the RTO/Transco will be fully functional within the timeframe currently contemplated by Act 1556.

The Commission is filing at the FERC its comments and recommendations on both the Entergy Transco and the SPP RTO. In those comments, the Commission supports both the Transco concept and the proposed SPP/Transco partnership but recommends that the Transco and the SPP RTO be approved only if certain conditions are met. With respect to the Transco, the Commission notes the possibility that Entergy shareholders may be the only stakeholders in the Transco if it is approved as filed. This lack of non-Entergy stakeholders may compromise the perception, if not the fact, of the Transco's independence from Entergy's generation marketing function. The Commission therefore recommends that the FERC approve the Transco only on the condition that Entergy either find additional Transco participants or file a plan for full or partial divestiture of Entergy's interests by a date certain. The Commission additionally recommends that the partnership agreement between the SPP and the Transco be clarified and that certain revisions be made to the Transco Operating Agreement.

With respect to the SPP RTO application, the Commission points out the failure of SWEPCO, OG&E, and Empire to commit to joining that RTO and recommends that the FERC condition approval of the SPP RTO on their and other transmission owners' filing for approval to participate. The Commission additionally recommends that the SPP's transmission expansion planning function be strengthened consistent with FERC precedent and that its market monitoring function be expanded.

A second FERC matter that should be concluded before ROA can responsibly be implemented in Arkansas is the proceeding, referenced earlier, in which the FERC is considering what amendments to the System Agreement are necessary to accommodate ROA in one or more of the jurisdictions in which Entergy operates. The Commission, which has intervened in that proceeding and is actively working to protect the interests of Arkansas ratepayers, cannot share EAI's stated expectation that the case will be resolved by January 1, 2002. First, the FERC has extended the date for its decision to October 31, 2001. The parties will have thirty days after that decision to request rehearing. After rehearing is requested, it is not unusual for the FERC to take months or even years to make its final decision. It is very unlikely that a resolution of the issues currently pending at the FERC will have been obtained by the end of 2001. Additionally, it is reasonable to expect that, absent a settlement of these proceedings, judicial appeals of that decision will be filed, adding a year or more to the time for final resolution.

The resolution of the issues raised in the Entergy System Agreement proceeding will be critical to the Commission's future evaluations of the benefits and risks attendant to implementation of ROA. Entergy has proposed to amend the System Agreement to allow EOCs subject to ROA to cease their participation in it. If those EOCs are not allowed to withdraw, their ratepayers may be subject to increased FERC imposed charges resulting from the complex, automatic operation of the Agreement's cost allocation formulas. Additionally, the Louisiana Public Service Commission, which regulates Entergy Louisiana, Inc., and the City Council of the City of New Orleans, which regulates Entergy New Orleans, have asserted certain rights to EAI generating capacity which could affect the level of EAI's stranded costs. Finally, Entergy has asserted that its shareholders should be held harmless from all costs resulting from any measures that the FERC may adopt to protect ratepayers whose EOCs are not subject to competition. If the FERC agrees that shareholders should be held harmless, the resulting costs would be borne by the ratepayers of the EOC(s) that have implemented competition. As noted above, the PSC is actively working in that case to protect the interests of Arkansas ratepayers; nevertheless, the outcome of the litigation is uncertain. It will be very difficult for the Commission to make informed recommendations as to the implementation of competition in Arkansas until these issues are resolved.

The Commission notes that SWEPCO is also a party to a FERC-jurisdictional agreement that allocates costs among the operating subsidiaries of its parent, American Electric Power ("AEP"). The Commission has been advised that amendments to that agreement are under development, but SWEPCO/AEP have not yet provided any specifics as to their proposal. Those amendments will also be subject to FERC approval, with the potential for further litigation that must be resolved before ROA may be implemented. Since those amendments have not yet even been filed at the FERC, it is improbable that the issues they raise will be resolved in time to accommodate the timeframe currently set forth in Act 1556.

The Commission is cognizant of the concern that has resulted from this past summer's price spikes in California. However, the Commission would note that Arkansas' present circumstances are significantly different from those of California. In particular, the Commission notes that a number of companies have announced plans for significant new capacity to be constructed in this region. The Commission further notes that new generation is currently under construction in Arkansas and that more is planned. This new generation reduces the likelihood that Arkansas will experience supply problems similar to those which were, in large part, the cause of the California price spikes. Further, the successful implementation of effective RTOs should encourage expansion of the transmission system, where appropriate, so that constraints similar to those that contributed to California's problems will not be present in this region. However, there are still significant transmission issues that must be addressed and market power mitigation and enforcement remedies that must be established as a prerequisite for an effective competitive marketplace that could produce net public benefits.

The Coops have argued that Act 1556 should be amended to remove the dates certain for ROA implementation. They recommend instead that the date for implementation be established by the Commission upon its finding that ROA will be in the public interest. The Commission acknowledges that this argument has some limited appeal. On balance, however, the Commission has concluded that the continued requirement of a date(s) certain will be crucial in ensuring that the work necessary to establish an effective market infrastructure will continue to be performed so that the market structure will exist when the prerequisites for effective competition and net public benefits are in place. Additionally, having a target timeframe for ROA will give the public, the electric utility industry, and potential market entrants a level of certainty that will assist them in planning for the future. This is particularly important with respect to the addition of new generating capacity. It is more likely that investments will be made in new capacity if potential investors have more information about the market in which they will be selling. If the Act is amended as the Commission recommends, the Commission will be able to extend the implementation date of ROA, within certain limits, if implementation on a particular date is not in the public interest. The 2003 to 2005 window provided by the recommended amendments will allow all parties to continue to evaluate the time at which ROA implementation is most likely to be in the public interest, and the intervening 2003 and 2005 legislative sessions will provide the Commission and other parties with additional opportunities to propose further modifications or extensions if necessary.

The Commission continues to firmly believe that the movement toward establishing effective wholesale competition and regional transmission organizations is appropriate, and that continued evaluation of the costs and benefits of retail competition should be made. The Commission also continues to believe that Act 1556 provides an appropriate framework for the implementation of ROA, at whatever date the

Commission concludes its two-pronged “readiness” test has been met. The Commission’s proposed extension of the target time period for implementing ROA is intended to ensure that the necessary prerequisites for effective competition are in place at such time as it is determined that retail competition can produce net public benefits for the state of Arkansas.

The Commission notes that the extension of the recommended ROA transition period also allows for two additional legislative sessions in 2003 and 2005 to consider further changes, or even further delay, if future developments indicate that implementation of ROA in the modified timeframe is undesirable. In the interim, the Commission will continue to monitor projected market prices to ensure that its reports and recommendations to the General Assembly are as current as possible.

Attachment A

Questions the Commission Asked Parties to Respond to and A Summary of the Responses in Docket No. 00-190-U, Order No. 1, Released July 19, 2000

Retail Electric Rates

Current expectations (forecasts) for the generation costs (rates) that each customer class in your Arkansas allocated service territory would pay each year for the period 2002 - 2010 under the assumption that regulation of generation were continued through 2010.

Staff – for the period cited, rates under continued regulation in Arkansas will be less than unregulated, market based rates. Generation prices for all Arkansas utilities should fall within a range of 3¢ to 4.89¢ over the period (with EAI continuing to have the highest cost-based rates.)

EAI – provided protected information regarding residential and small commercial prices price estimates for the year 2000, under regulation. They state that long-term estimates are too dependent on a variety of different variables which may change dramatically over time (e.g., gas cost, regulation).

Swepco – provided protected information on estimates of generation costs under continued regulation. They also estimated that under regulation, generation rates will increase from 2002 - 2010.

OG&E – believes that significant uncertainties makes attempting any forecast of its future rates under regulation is of limited value. Fuel costs, regulatory changes, environment regulation, demand or supply changes, all would render the 10 year estimates unreliable. For this reason OG&E does not provide this information.

Empire – provided the requested information. However, it is proprietary.

Coops – estimated future retail rates under continued regulation using this year's actual, and adopting AECC's (its generation supplier) future years' estimates of its wholesale rates. (AECC agrees with position of Distribution Coops.) Noting that these estimates would likely change over time, under regulation, the expected rates for generation are expected fall within ranges over the period, with lower prices in the earlier years as follows:

Years	Res/Sm Com	Large Com	Indust	Interrupt	Irrigation
2002	3.2¢ - 4.5¢	3.0¢ - 4.1¢	2.1¢ - 3.5¢	2.6¢ - 2.6¢	3.8¢ - 6.7¢
to					
2010	3.5¢ - 4.9¢	3.3¢ - 4.5¢	2.3¢ - 3.8¢	2.8¢ - 2.9¢	4.1¢ - 7.4¢

Ouachita -- states that under continued regulation, a coop's generation rates would only change to the extent that AECC's rates would change.

Current expectations (forecasts) regarding the range of retail generation prices that each customer class in your Arkansas allocated service territory would pay each year for the period 2002 - 2010 under the competitive market for generation.

Staff – states that market prices are expected, for the most part, to range on average from 3.5¢ to 6.5¢ over the same period. It is not in the public interest to shift to competitive generation at this time.

EAI – These estimates are proprietary.

Swepco – These estimates are proprietary.

OG&E -- While OG&E does not provide "retail rates" expected under a competitive market (for all the same reasons it did not provide an estimate of regulated rates), it has estimated that new generation, built to meet competitive markets, will cost approximately $36.50 per MW.

Empire – expects its own prices to very low in the early years of competition, but in unable to predict what would occur in later years. Empire has not done a study of competitive prices.

Coops -- Noting the difficulty in estimating retail rates under a market that does not yet exist, the Coops provide a "low" range of estimate prices for each year, each rate class, and a "high" range of estimate prices for each year, each rate class. The Distribution Coops do not guarantee this "good faith" estimate of the ranges. The low range is based on the assumption that there will be increased efficiencies, a 10% savings in costs, and adequate generation competition to warrant the price levels. The high range is based on the assumption that costs could double, as reflected in current California markets which is due to limited supply and inadequate competition. The low/high ranges are reflected as (it is assumed, under all scenarios, that lower costs are reflected in the earlier years, increasing in later years):

Years	Res/Sm Com	Large Com	Indust	Interrupt	Irrigation
2002					
Lower Range	2.9¢ - 4.0¢	2.7¢ - 3.7¢	1.9¢ - 3.1¢	2.3¢ - 2.4¢	3.4¢ - 6.0¢
Higher Range	6.5¢ - 9.0¢	6.0¢ - 8.3¢	4.2¢ - 6.9¢	5.1¢ - 5.3¢	7.5¢ -13.4¢
2010					
Lower Range	3.2¢ - 4.4¢	3.0¢ - 4.1¢	2.1¢ - 3.4¢	2.6¢ - 2.6¢	3.7¢ - 6.6¢
Higher Range	7.1¢ - 9.8¢	6.6¢ - 9.1¢	4.6¢ - 7.6¢	5.7¢ - 5.8¢	8.2¢ -14.7¢

Ouachita -- states that in a competitive market, the coop's *generation rates would increase*, reflecting (1) the need to hedge against price spikes, (2) to support the new ESP with new costs, (3) to pay for the transition costs.

Current expectations (forecasts) regarding the opportunity/possibility for each customer class in your Arkansas allocated service territory to obtain lower/higher retail generation prices under competition than they would have received under continued regulation each year of the 2002 - 2010 period.

Staff – states that for the period of 2000-2010, in general, regulated generation prices in Arkansas will be less than those available in the market.

EAI – Including the impact of possible transition charges, for the year 2000, under competitive markets, EAI estimated a range of savings for residential and small commercial customers. However, these estimates are proprietary. The company stated that long-term estimates are too dependent on a variety of different variables which may change dramatically over time (e.g. gas cost, regulation).

EAI continues by arguing that the real benefits are not just the short term price savings. More importantly the shift in risk from ratepayers to investors and the introduction of new and improved services (e.g. national accounts, load management, risk management, bundled services) will be a result of moving to generation competition. Over the long-term, savings will be garnered by more effective cost containment from larger operations (with regulatory safeguards set to assure continued competitive markets). Finally, more appropriate demand pricing, with consumer response to price signals will be effected.

Swepco – expects all customers to benefit from the move to competition. The Commission should focus on the long term benefits which will arise from deregulation, as indicated in other industries, (10 - 25% savings over regulation.)

OG&E – cannot give precise numerical value to adopting competition for generation, it is clear that, in the long run, competitive generation will reduce prices and bring new value and services to the market.

Coops – state that generation savings may or may not be achieved for any rate class. If it is assumed some savings in a competitive market, these savings could be entirely offset by the additional costs of transmission expansion needed to effect open markets. While it is generally assumed that large customers will benefit with lower prices, as current regulated rates move to equal rates of return and large customers negotiate contracts with suppliers, estimated savings for these customers under competition may not be that great. Turning to small customers, the Distribution Coops state that while these customers could enjoy some savings, the downside risk of much greater increases is significant. For example, assuming a ten percent savings upon open access, a typical residential customer would save between only 9¢ to 14¢ per day (roughly $35 to $51 per year). However, should the doubling of prices experienced by California were to occur during high peak months, the small customer would experience a net loss over the year. AECC agrees with position of Distribution Coops.

Ouachita – argues that large customers will enjoy any benefits of lower generation costs. All other customers will be subject to price increases under competition, certainly in the short-run and possibly in the long-run. To the extent, however, that the Arkansas market does not enjoy sufficient competitors, even large customers may face price increases

Current expectations (forecasts) of any customer transition charge pursuant to Act 1556, segregated by nuclear decommissioning costs, stranded costs and transition costs, for each year of the 2002 - 2010 period.

<u>EAI</u> – provides proprietary estimates assuming a "low" cost model, a "medium" cost model, and a "high" cost model of *total* stranded, decommissioning, and transition costs.

<u>Swepco</u> – provided estimates its Arkansas transition costs. However, these estimates are proprietary. The company states that transition costs will include (1) customer information and meter systems, (2) energy delivery and energy service systems, (3) load profiling and settlement systems, (4) software integration systems, and (5) outside assistance. Swepco has no nuclear units recoverable from Arkansas, thus, it has no stranded costs or decommissioning expenses.

<u>OG&E</u> – points out that it has no stranded costs. The company expects its total transition costs to reach some $21 million, of which approximately $6.4 million would be directly attributable to Arkansas, with some of these costs possibly considered distribution and included in those rates.

<u>Empire</u> – has no stranded costs. Costs for transition will be incurred by UtiliCorp, with which Empire is merging.

<u>Coops</u> – provided individual Coop estimates of expected transition costs to staff. As a group, the Distribution Coops expect those costs for the distribution cooperatives (not AECC) to range from approximately .01¢ to .859¢ per kWh for recovery in 2003 and from approximately .003¢ to .057¢ per kWh for recovery in 2004. AECC agrees with position of Distribution Coops.

Wholesale Electric Market

Current expectations for the schedule for formation and implementation of a Regional Transmission Organization (RTO)/Independent System Operator (ISO) and associated competitive wholesale power market.

<u>Empire</u> – states that the Southwest Power Pool (SPP) expects to file an amended application for RTO status in September or October 2000. Further, approval and implementation are expected about 2001. The company notes that there will be markets set up for imbalance and other ancillary services and there is a competitive wholesale power market today which may be enhanced by RTO formation, and for this reason Empire does not expect an "associated" market.

<u>Swepco</u> – expects the SPP to develop plans and file with FERC an application for approval as an RTO on or before 10/16/00. Swepco notes that it's current plan is to join the SPP RTO if the FERC approves this application. Swepco also believes that since the SPP must be in

operation as the regional RTO by 12/15/2001 then it should be able, by the date of retail open access in Arkansas, to perform all necessary functions.

<u>OG&E</u> – expects that the SPP will make a RTO filing by 10/15/2000, the SPP filing will request an effective date of 1/1/2001, which would require a favorable order by the end of 2000.

<u>EAI</u> – responded that Entergy Services Inc (ESI) intends to file with FERC by mid-October of this year demonstrating compliance with FERC Order 2000. ESI is also participating in the collaborative process sponsored by the SPP. EAI states that there are two other regulatory initiatives that will further the development of regional wholesale markets. First is that the Entergy System Agreement case is expected to be resolved during 2001. They also note that a market power analysis filing with the APSC is expected to be completed during 2001.

<u>AECC</u> -- supports the efforts of the SPP to form a RTO. AECC notes that several factors could affect the development of an RTO/ISO in the wholesale market which could affect Arkansas: (a) FERC's Order 2000 schedule, (b) the SPP stakeholder development of a RTO proposal that will satisfy FERC's minimum criteria, and (c) the practical realities of implementing any complex plan that is dependent on the actions of multiple parties, (3) timing uncertainties could cause delays at least through 2002 if not later, and (4) the APSC should have the authority to exercise the flexibility to allow delay of ROA until a regional RTO is formed and functioning

Current expectations regarding the time required for the competitive market to fully develop under the RTO/ISO and any measures to be employed to protect consumers or market participants against excessive prices or price volatility during the market development period. Specifically address the market development issues encountered by the ISOs in the California, New England, and PJM markets as they may relate to the formation of the wholesale market in Arkansas.

<u>Empire</u> – states that the ancillary service market will take two or more years to develop. They note that the transition to a fully competitive market will experience price volatility until new generation entries have been sufficient and that high prices in periods of excessive demand are to be expected. They suggest that there should be protections against abuses but not against high prices and that price cap regulation will only exacerbate problems. Empire made several observations concerning California problems that have developed due to deregulation, and state that they have not studied the New England and PJM markets.

<u>Swepco</u> – believes that all of the market mechanisms necessary for a wholesale market to be workably competitive will be in place by 1/1/2002. They note that the SPP has hired Anderson Consulting to help develop the tools necessary to manage a competitive wholesale market. They also state that the SPP will have a market monitoring function designed to detect inappropriate market behavior. They believe that the lessons to be learned from the California experience is that it is a mistake to try and manage the market. Swepco argues that in New England and the PJM, the wholesale markets have performed well over the last summer when the California market became the center of controversy. Swepco points out a number of differences between Arkansas and California. First, unlike California, Arkansas did not require divestiture or a mandatory power exchange. Second, the characteristics of the SPP ISO resemble the NE and PJM ISOs more closely than the California ISO. Third,

deregulation in Arkansas will not create California-style price spikes, because those spikes reflect supply and demand conditions unique to California. Fourth, California is not a good model or indicator of the results of electricity competition, Pennsylvania provides a much better example,

Nucor – believes the APSC should continue playing an active role in the formation of any RTO/ISO serving wholesale electricity markets in Arkansas as well as work directly with Arkansas stakeholders to evaluate all critical RTO/ISO issues. The APSC should try to create the best possible environment for competitive success by avoiding the mistakes made in other states and regions. Finally, the APSC should require distribution utilities to offer demand-responsive pricing programs, encourage them to hedge against price volatility in wholesale markets, and provide incentives to minimize overall wholesale prices.

OG&E – responded by stating that the SPP will provide many functions that should facilitate the development of the wholesale market. The congestion management system should operational by 10/2001. OG&E argues that although the RTO organization is not the sole answer to price volatility, it can provide a solid foundation to improved markets, and will establish a transmission planning process, a congestion management system that will result in more efficient use of the system, and facilitate consistent market rules over a wider trading area. OG&E closes by stating that to avoid California problems Arkansas should keep entry into generation easy, allow bilateral purchase agreements, long-term contracts, all forms of hedging, promote transmission expansion where needed, and promote time or season-of-use pricing.

EAI – The regulatory, institutional and market indicators all point to the regional wholesale market around Arkansas being competitive in the 2002 period according to EAI. They note that the ability for developers to bring new capacity into service is a prerequisite for effective competition and Arkansas seems to be in good shape given the level of new capacity currently under development in the region. However, EAI also believes that a delay in ROA could effect some of the new merchant generating capacity in the region. EAI also believes that there should be confidence that the California experience will not be repeated in Arkansas. For one, in Arkansas the Standard Service Package for smaller customers will prevent some customers from undue market price volatility unless the customers choose a competitive rate structure that exposes them to such volatility.

AECC – suggests that while it is difficult to estimate the start date for implementation of the SPP's RTO plan, it is possible that the start date will be later than the deadlines set by FERC. AECC believes it is impossible to predict when the wholesale market will be sufficiently developed to provide the minimum elements necessary for competition and protection of consumers. They state that there needs to be included a provision in the RTO to assure that small customers have access to transmission capacity. They agree with EAI that Arkansas' SPP provision is an important example of a service that affords essential consumer protection by offering customers the opportunity to take electricity under rates and terms comparable to those existing prior to competition.

Staff – asserts that based on the experience in other regions, it is unlikely that a competitive wholesale market will be fully developed in this region before 2005. In fact experience in other areas indicate that it is unlikely to occur before 6/30/03. They also state that implementation of an RTO on 12/15/2001 will not assure a fully developed, competitive wholesale market on 1/1/2002 but that experience suggests a minimum of three additional years to develop and implement the necessary market systems.

Current expectations regarding the market pricing structure for the competitive wholesale market to be operative under the RTO/ISO.

<u>Empire</u> – expects that bulk power will operate essentially as it does today, with more electronic trading.

<u>Swepco</u> – expects the market to be built on bilateral contracts and that the prices in these contracts will be determined through negotiation.

<u>OG&E</u> – the SPP will not operate a power exchange for the purposes of purchasing and selling energy, but rather, bilateral trading will continue to be the dominate method for energy trades until such a time that the market would develop and support a spot energy market.

<u>EAI</u> – the structure of the wholesale market under the RTO will be patterned more closely after the models already in existence in the northeast than the one in California and the overall structure is expected to include a balancing energy market and an installed capacity requirement

<u>AECC</u> – states that SPP's plan is for a "net pool" market design, whereby most energy trades are conducted via bilateral contracts. They also state that market participants will schedule their load and their supply resources one day ahead, and SPP will dispatch in real time.

Current expectations (forecasts) for the range of wholesale market price levels (seasonal, peak and off-peak) for each year of the period 2002 – 2010 considering the expected market structure, expected market entrants, and expected trends in fuel costs and customer demand.

YEAR	**AECC ($/Mwh)**	**STAFF ($/Mwh) /1**	**STAFF ($/Mwh) /2**	**STAFF ($/Mwh) /3**
2002	40.6	28.58	26.02	37.42
2003	41.8	29.81	26.62	37.40
2004	43.0	31.04	27.21	37.38
2005	44.3	32.28	27.80	37.36
2006	45.7	33.85	28.69	40.34
2007	47.0	35.42	29.57	43.32
2008	48.4	37.00	30.46	46.30
2009	49.9	38.57	31.35	49.28
2010	51.4	40.14	32.23	52.25

/1 – Staff base case price projections, all hours energy

/2 – Staff low case price projections, all hours energy

/3 – Staff high case price projections, all hours energy

Competitive Benefits (Responses to these questions are found in the body of the report.)

Competition in wholesale electric markets is developing rapidly. To what extent, if any, can the implementation of wholesale electric competition provide the same benefits to consumers and to society as can retail electric competition? Are there benefits of retail competition that cannot be achieved through wholesale competition and, if so, please describe those benefits.

Assuming appropriate legislative authority, discuss the advantages and/or disadvantages of initiating electric competition beginning with the establishment of a workably competitive wholesale market and fully functioning RTO, potentially coupled with open access to generation supplies for industrial customers, and then subsequently reevaluating the costs, benefits and timing of retail open access for other customer classes. Would you recommend such a phase-in and under what terms and conditions should such phase-in be implemented? If you can not recommend such a phase-in, why not?

Attachment B

Comments of Chairman Sandra L. Hochstetter
in Docket No. 00-190-U at Hearing on Collaborative Process
October 11, 2000

Good afternoon. Thank you for attending the opening segment of the collaborative phase of Docket No. 00-190-U. As most of you are aware, Act 1556, specifically Section 23-19-107, requires the Commission to report to the General Assembly before January 15, 2001, on the progress of the development of competition in electric markets and the impact, if any, of competition and industry restructuring on retail customers in Arkansas. The statute enumerates several specific items that must be included in the report, including recommendations for further legislation that the Commission finds appropriate to promote the public interest.

As the Commission contemplated the preparation of this report, we determined that it would be most appropriate to afford the parties to the legislative debate that culminated with the passage of Act 1556, and other interested parties, the opportunity to provide input and assistance to the Commission in its preparation of this required report. This docket is the vehicle the Commission selected to facilitate that input. Because this involves the preparation of a legislative report as opposed to a regulatory order, we felt that it would be appropriate for the Commissioners to share with all parties our overall concerns and initial impressions prior to the collaborative discussions scheduled to begin tomorrow morning.

Based on the Commission's review of the parties' comments and supporting cost estimates, it would appear that there is a substantial amount of agreement on specific areas of concern pertaining to our electric restructuring timeframe. For various reasons the comments of many of the parties advocate extending the transition to retail open access.

General Staff argues that it is not in the public interest to keep the current timetable for generation competition and that the Commission should propose an amendment to 1556 to delay implementation of retail access with the Commission having discretion in setting the date for open access.

The Attorney General concurs with this assessment, citing concerns over price, supply and the administrative burden to meet current deadlines.

AECC, supported by the Distribution Coops, contends that, since an effective wholesale market, adequate reliability, and retail consumer safeguards are not in place, the Commission should recommend a delay in implementation of retail access.

Nucor states that the Commission should not recommend meeting the current deadline unless the market structure can be reasonably expected to work.

EAI, SWEPCO and OG&E generally argue that the current implementation date for retail access doesn't need to change. EAI states that the needed protections and market vehicles will be in place in time to meet the first date for retail open access allowed in Act 1556. The IOU's further argue that delay of ROA would also mean delay of achieving economic and other benefits which retail access can provide.

After reviewing the initial comments as well as observing and reflecting on the experiences of and lessons being learned in states that are ahead of us, we wanted to take this opportunity to provide all of the parties with guidance and direction for your collaborative efforts as to what specific things that, at this point, we do and do not feel are appropriate to make as legislative recommendations.

First, the Commission reaffirms its continued support for competition in utility services that can be provided in a truly competitive environment. Along those lines, the framework of Act 1556 is still a sound one and continues to be one of the best overall statutory frameworks in the country. The difficulties we see on the horizon have little to do with the overall framework but rather are related to the timing of the transition to competition.

With that said, let us share our overall objectives. In essence, we see two very important parts of the equation that will need to exist before retail open access can successfully occur. First, we need for the overall structure and framework to be in place to facilitate a workably competitive market. Further, not only should all the necessary prerequisites for effective competition be in place, but they should have actually been operational long enough to be able to produce a workably competitive retail market. Some examples of the critical elements of this structure include (1) having a robust and competitive wholesale market, (2) a fully functioning RTO, (3) the elimination of vertical and horizontal market power to the maximum extent possible, (4) all "back office" systems and rules and regulations to be in place, and (5) all proceedings completed that are necessary to effectuate workable competition in retail markets. While some parties may believe that all this work can be done within the next year, it is quite obvious that the infrastructure will not have been completed, fine-tuned and in successful operation by any date within the existing statutory timeframe. As just one example, the RTO system that must be in place to accommodate ROA has not even been filed at the FERC, much less reviewed, approved, and in a fully operational state.

The second part of the equation is to be able to say that, after looking at all customer classes across the state, the NET public interest will be served by going forward with retail competition. And to define this further, the net public interest test should encompass price, as well as non-price, benefits.

Accordingly, in order for this Commission to feel confident that we have done our job to the best of our ability, we will not be able to give the legislature the "green light" for retail competition until both a demonstrably effective market structure exists and there is a reasonable chance for most consumers to realize cost savings.

Now that we have articulated the two prongs of our public interest test, we will share with you what we believe is obvious about moving forward with a report to the legislature and moving forward with this collaborative process.

First, in light of the critical pieces of the market structure that will be either missing or in their infancy as of January 1, 2002, and in light of the cost-benefit analyses that we have seen to date, retaining the current ROA dates in Act 1556 is not a viable option. In other words, maintaining the timing of the legislation at the "status quo" as it was written 18 months ago is not even in the ballpark for consideration and should not be a starting point for your discussions. It is not an option that this Commission can entertain, so any discussions around that possibility would be non-productive.

Because our public interest test is not likely to be met between January 1, 2002 and June 30, 2003, none of the dates within that timeframe would be appropriate starting points. In other words, this Commission is not likely to recommend a start date any earlier than sometime AFTER June 30, 2003.

The concept of a "window" of time within which retail competition can begin is a sound one. We believe it comports with the type of flexibility and opportunity for course corrections which, based on recent events across the country, should be obvious that all state regulators need. Accordingly, we believe that we need to retain timing flexibility to ensure that the market structure is ready, update the cost-benefit analyses, and have an opportunity to continue to observe the lessons learned in other states and modify our plans as necessary and appropriate. At this point, it would seem that annual reviews of the appropriate opening date would make the most sense in terms of the likelihood of changed circumstances and efficiencies.

Given these opinions of the Commission, at this juncture we would leave it to you to discuss the various timing and transition options that you might want to explore and debate. The Commission hopes that the collaborative discussions that take place tomorrow, with the Executive Director acting as leader and facilitator, will produce a consensus proposal that all stakeholders are willing and able to support as a recommendation to the legislature. ...

Attachment C

Joint Agreement In 00-190-U[16]

[16]This Attachment does not include the attachment to the Joint Agreement which reflects proposed legislative language agreed to my the parties to the Agreement. Instead Attachment D utilizes the work of the parties to the Joint Agreement as a base and makes modifications to that document.

BEFORE THE

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A PROGRESS REPORT TO THE GENERAL ASSEMBLY ON THE DEVELOPMENT OF COMPETITION IN ELECTRIC MARKETS AND THE IMPACT, IF ANY, ON RETAIL CUSTOMERS	)))))	DOCKET NO. 00-190-U

JOINT AGREEMENT

The following parties to the docket, the General Staff of the Arkansas Public Service Commission; Entergy Arkansas, Inc.; American Electric Power, Inc./Southwestern Electric Power Company; Oklahoma Gas and Electric Company; and the Empire District Electric Company (collectively referred to as the Parties) offer the following Joint Agreement that the Parties endorse and support as a recommendation to the Arkansas General Assembly.

The Parties are authorized to state that Nucor-Yamato Steel Company and Nucor Steel-Arkansas do not object to the Joint Agreement, although the Companies do not have a position as to the time within which retail open access can effectively be achieved.

In Order No. 15 in this Docket, issued on October 2, 2000, the Commission scheduled a collaborative for October 12, 2000. On October 11, 2000, the Commission convened a hearing and provided guidance and direction to the Parties regarding the collaborative effort to explore the possibility of forming a consensus proposal that all parties to this Docket could support as a recommendation to the General Assembly. Beginning on October 11, 2000 and continuing thereafter, the parties to this Docket engaged in that collaborative effort. As a result of those discussions, the undersigned Parties concur with the following Joint Agreement.

Proposed Legislative Changes

The Parties recommend that Act 1556 of 1999 be amended such that the earliest implementation date for retail open access in Arkansas be moved from January 1, 2002 to October 1, 2003. The Parties further recommend that the Commission be given the discretion to extend the implementation of retail open access through October 1, 2005 in increments of up to twelve months pursuant to Ark. Code Ann. § 23-19-103 (a). The dates in the legislation tied to the date for retail open access should be extended proportionally with the extension of the implementation date for retail open access.[17] The legislative revisions necessary to accomplish these changes are included in Attachment 1[18]. Further, the Parties agree that the public interest is served by collective agreement on these matters.

As the Commission is aware, a great deal of activity has occurred to date in an effort to implement retail open access by January 1, 2002. Extending the transition period should allow time to implement the structures necessary for retail open access. The Parties will use their best efforts to have all of the necessary structural prerequisites for retail open access in place and operational by October 1, 2003.

Collaborative to Address Transition Issues

To the extent extending the implementation dates for and transition to retail open access creates

[17] Except for the dates that will have occurred by the time of the 2001 regular session of the Arkansas General Assembly, such as the dates for filing unbundled tariffs and rates and market power analyses.

[18] Including a provision specifically permitting an electric utility to withdraw its notice of intent to recover stranded costs.

additional transition issues, the Parties agree to convene a collaborative not later than January 25, 2001 to address, within the existing regulatory framework, certain issues that would be consistent with an efficient transition to competition. Specifically, the collaborative will address generating and transmission capacity needs and associated cost recovery procedures, and competitive options for large industrial customers. The collaborative may identify issues that require formal Commission consideration.

Wherefore, the Parties urge the Commission to accept the Joint Agreement and include its provisions in the Commission's forthcoming Report to the Legislature.

Respectfully submitted,

General Staff of the Arkansas
Public Service Commission

By: ________________________________

Valerie F. Boyce
Staff General Counsel
1000 Center Street
P.O. Box 400
Little Rock, AR 72203-0400
(501) 682-2047

Entergy Arkansas, Inc.

By: ________________________________

Jeff Broadwater
425 West Capitol Ave.
P.O. Box 551
Little Rock, AR 72203

(501) 377-4372

Oklahoma Gas & Electric Company

By: ______________________________

Lawrence E. Chisenhall
Chisenhall, Nestrud & Julian, P.A.
400 West Capitol, Suite 2840
Little Rock, AR 72201
(501) 372-5800

American Electric Power, Inc./
Southwestern Electric Power Company

By: ______________________________

David R. Matthews
Matthews, Campbell, Rhoads, McClure
& Thompson, P.A.
119 So. Second Street
Rogers, AR 72756
(501) 636-0875

W. W. Elrod II
Gill Elrod RagonOwen Calhoon Skinner
& Sherman, P.A.
3801 TCBY Tower
Capitol & Broadway
Little Rock, AR 72201
(501) 376-3800

Empire District Electric Company

By: ____________________________

Dean L Cooper
Brydon, Swearengen & England, P.C.
312 East Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102-0456

CERTIFICATE OF SERVICE

I, Valerie F. Boyce, hereby certify that a copy of the foregoing Joint Agreement on has been served on all parties of record by forwarding the same by email and/or first class mail, postage prepaid, this 20th day of October, 2000.

____

Valerie F. Boyce

Attachment D

The PSC's Recommended Changes to Act 1556

Arkansas Code Annotated 23-19-101(d) is amended to read as follows:

The General Assembly finds that a competitive retail electric market that gives retail customers the opportunity to choose the retail customer's provider of electricity and that encourages full and fair competition among providers of electricity should be established by ~~January 1, 2002~~, October 1, 2003, but no later than ~~June 30, 2003~~, October 1, 2005. The General Assembly further finds that reciprocity among electric utilities and other providers of electric service to the extent permitted in this chapter is necessary to promote fair competition and to ensure the benefits of competition to the greatest number of consumers, and that reciprocity to the extent authorized in this chapter would assist in the transition from regulation to competition.

Arkansas Code Annotated 23-19-103 (a) is amended to read as follows:

Retail open access shall be implemented by electric utilities on ~~January 1, 2002~~, October 1, 2003. As to any particular utility or utilities, the commission may delay the implementation of retail open access for up to twelve months, ~~for ninety (90) days~~ and ~~for successive 90-day~~ ~~periods~~ successive periods thereafter, up to twelve months, but not beyond ~~June 30, 2003~~, October 1, 2005, upon finding that:

(1) The particular electric utility or electric utilities have not had a reasonable opportunity to commence determination of their stranded costs, if any, pursuant to §§ 23-19-303 because of circumstances beyond the control of the utility or utilities and shall not include an election by the utility to delay filing an application for stranded cost recovery until after the implementation of retail open access pursuant to §§ 23-19-301(a);

(2) Necessary approvals from the Federal Energy Regulatory Commission, or any successor agency, have not been obtained;

(3) Implementation of retail open access would have an immediate, irreparable, and adverse financial effect on county or municipal governments, or school districts;

(4) Appropriate metering, billing, and collection procedures have not been established;

(5) Implementation of retail open access would have a significant, adverse effect on the reliability of the electric system in Arkansas; or

(6) Implementation of retail open access would have a material adverse effect upon the public interest, especially including upon residential or small business customers in this state.

Arkansas Code Annotated 23-19-103(b) is amended to read as follows:

If retail open access implementation is delayed pursuant to subsection (a) for one or more utilities that serve, in the aggregate, fifty-one percent (51%) or more of the total customers served by electric utilities in this state, implementation shall be delayed for all electric utilities. Provided, however, that an electric utility may, at the utility's election, petition the commission for approval to proceed with retail open access implementation for its customers notwithstanding that implementation has been delayed for electric utilities that serve, in the aggregate, fifty-one percent (51%) or more of the total customers served by electric utilities in this state. If delayed pursuant *to this subsection (b), retail open access implementation shall resume, on a utility-by-utility basis as provided in subsection (a), as expeditiously as possible after the commission determines that electric utilities serving more than fifty-one percent (51%) of the electric utility customers in this state are ready to proceed with retail open access implementation. Except as provided in §§ 23-19-106(e), in no event shall retail open access be delayed beyond ~~June 30, 2003~~, October 1, 2005. For purposes of this subdivision, the number of customers served by a particular electric utility shall be determined by the commission's most recent annual report to the Governor pursuant to §§ 23-2-315. Each such report issued after the effective date of this chapter shall include the number of customers served by each electric utility.*

Arkansas Code Annotated 23-19-107(a) is amended to read as follows:

Before January 15, 2001, and thereafter before January 15 of each odd-numbered year through ~~2005,~~ 2007, the commission shall report to the General Assembly on the progress of the development of competition in the electric markets and the impact, if any, of competition and industry restructuring on retail customers in Arkansas. The report shall include:

(1) An assessment of the impact of competition on the rates and availability of electric service for each class of retail customers, in each allocated service territory, including but not limited to the extent of customers choice with regard to each customer class in each service territory, or in such other smaller units as may be determined by the commission;

(2) A summary of commission actions over the preceding two (2) years that reflect changes in the scope of competition in regulated electric markets;

(3) An analysis of the effect, if any, of competition on the reliability of the electric system and on the quality of service provided to customers; and

(4) Recommendations to the General Assembly for further legislation that the commission finds appropriate to promote the public interest in a competitive electric market.

Arkansas Code Annotated 23-19-107(c) is amended to read as follows:

Before January 15, 2003, and thereafter before January 15 of each year that the General Assembly convenes in regular sessions through ~~2013~~ 2017 the commission shall submit a report to the General Assembly that contains such information as the commission determines is necessary to allow the General Assembly to determine whether electric utilities or energy service providers are charging higher rates or refusing to serve or otherwise separating out for disparate treatment customers who live in particular areas or neighborhoods. Included in the report will be comparisons of the average rates charged by electric utilities or energy service providers to residential customers in different regions of the state. The commission sh all be empowered to demand disclosure of this information from every electric utility or energy service provided certified to do business in this state.

Arkansas Code Annotated 23-19-205(e) is amended to read as follows:

In addition to its proposed tariffs, the utility may file supporting cost data for costs, if any, that have *been found to exist as of that date, to be recovered through a customer transition charge that has been determined pursuant to §§§§ 23-19-303 and 23-19-304, and information specifying the rate of its qualified intangible charge or charges, if any, resulting from a securitization of stranded costs. ~~On or before July 1, 2001~~ Not later than 180 days before the implementation of retail open access and in accordance with a schedule and the procedures it may establish, the commission shall, after hearing, approve or modify and make effective as of that date, each electric utility's proposed tariffs for distribution services and any other services that will remain subject to rate regulation, and shall require electric utilities to show separate rates and charges for their unbundled services on bills to retail electric customers.*

Arkansas Code Annotated 23-19-301(a) is amended to read as follows:

No later than December 31, 1999, any electric utility that intends to seek recovery of stranded costs shall file notice of such intent with the Arkansas Public Service Commission. Such notice may subsequently be withdrawn by the electric utility prior to filing its application pursuant to this subsection but no later than December 31, 2001, thereby precluding any recovery of stranded costs through a customer transition charge. Any electric utility that does not file its election by that date shall not be eligible for such recovery. Such election shall be at the sole discretion of the electric utility. Following receipt of such notice, the commission shall, at the earliest practicable date, direct the electric utility to file an application setting forth the methods that the utility proposes to determine its stranded costs. In no event shall the commission direct that the electric utility file such application any later than one hundred eighty (180) days following the implementation of retail open access. Commission proceedings on such application shall be pursuant to notice and hearing.

Arkansas Code Annotated 23-19-404(b) is amended to read as follows:

Upon application, complaint or its own motion, and after notice and hearing, the commission ~~shall~~ may issue ~~by June 1,2001 or for good cause shown, no later than thirty (30) days thereafter, and at such later times as the commission shall determine,~~ an order finding whether any provider of a product or service for which competition is authorized by this chapter has market power. Within sixty (60) days of the issuance of such order, unless the commission grants an extension of time, such provider shall file with the commission, consistent with any rules or orders of the commission, a market power mitigation plan designed to eliminate the market power found by the commission. Such plan may include, without limitation, price caps, transitional standard offers, the auction of generation to be sold under long-term power contracts, the placement of assets or activities in affiliated corporations, and divestiture of assets or activities. After notice and hearing considering such plan, along with any alternative plans proposed by intervenors or commission staff, the commission shall order such provider to implement those measures determined by the commission to be necessary to mitigate the market power that it finds to be in the public interest. Such mitigation measures shall be implemented ~~by January 1, 2002 March 31,2002 , or such later date as may be authorized by the commission, but such date shall be no later than eighteen (18) months prior to the implementation of retail open access~~ as soon as practicable, in accordance with a schedule established by the commission, taking into account the planned date for the implementation of retail open access. The measures ordered by the commission may include, but are not limited to, *price caps, transitional standard offers, the auction of generation to be sold under long-term power contracts, the auction or other competitive selection of the right to serve customers who have not made an affirmative selection of an electric utility of electric service provider as provided in subsection (c) of this section, and divestiture of assets or activities; provided, that the commission may not order an electric utility or affiliated energy services provider to divest assets or activities without the consent of such utility or affiliated energy services provider, unless and until the commission determines that other available measures will not adequately mitigate the utility's or affiliated energy services provider's market power. Furthermore, the commission may delay implementation of divestiture until after the implementation of retail open access if implementing divestiture prior thereto would increase the utility's stranded cost and would be contrary to the public interest. If the commission determines that no mitigation plan proposed or considered pursuant to this subdivision will adequately mitigate market power, the commission shall notify the House and Senate Committees on Insurance and Commerce and may refer its findings and any recommendations to appropriate state or federal authorities, fine action(s) under applicable laws in any court of competent jurisdiction or take such other action as is authorized by law. Nothing in this subdivision shall in any way limit the obligations or liability, under state or federal antitrust or consumer protection laws or regulations, of an electric utility or energy service provider for conduct arising after implementation or retail open access. In addition, a proceeding pursuant to this subdivision shall not be a condition precedent to an action pursuant to state or federal antitrust or consumer protection laws or regulations.*

Arkansas Code Annotated 23-19-404(e) is amended to read as follows:

No later than ~~July 1, 2008~~ April 1, 2009, and annually thereafter, the commission shall submit to the General Assembly a report assessing the competitiveness of those markets for which competition has been authorized by this chapter. Each such report shall include a recommendation as to whether the authority granted to the commission under this section should be continued, revised, or repealed. Upon receipt of such report, the House and Senate Committees on Insurance and Commerce shall make a recommendation to the General Assembly as to whether to revise or repeal this section.

Arkansas Code Annotated 23-3-201 is amended to read as follows:

Requirement for new construction or extension. ~~***[Effective January 1, 2002]***~~ ***<u>[Effective October 1, 2003.]</u>***

(a) No new construction or operation of any equipment or facilities for supplying a public service, or extension thereof, shall be undertaken without first obtaining from the Arkansas Public Service Commission a certificate of public convenience and necessity require, or will require, such construction or operation. provided, however, no such certificate shall be required for electric generation facilities.

(b) If the construction or operation has been commended under a limited or conditional certificate, or authority as provided in §§23-3-203 - 23-3-205, this section shall not be construed tor require the certificate, nor shall the certificate be required for an extension within any municipality or district within which service has been lawfully supplied, or for any extension within, or to territory then being served, or necessary in the ordinary course.

Arkansas Code Annotated 23-18-103 is amended to read as follows:

Purchase of electricity from affiliated company. ~~***[Repealed effective January 1, 2002.]***~~ ***<u>[Repealed effective October 1, 2003.]</u>***

(a) As used in this section, unless the context otherwise requires:

(1) "Affiliated company means any business entity which is owned wholly or partly by an electric utility or which wholly or partly owns an electric utility, or any business entity which is owned by another business entity which wholly or partly owns an electric utility;

(2) "Electric utility" means an electric utility subject to the jurisdiction of the Arkansas Public Service Commission.

(b) Without the prior approval of the Arkansas Public Service Commission, no electric utility shall enter into any agreement for the purchase of electricity from an affiliated company.

(c) Any agreement entered into in violation of this section shall be void.

(d) The Arkansas Public Service Commission shall promulgate such regulations as are necessary to implement this section.

(e) This section shall apply to agreements entered into on or after June 28, 1985.

Arkansas Code Annotated 23-18-104 is amended to read as follows:

Construction of power-generating facilities outside the state. ~~***[Repealed effective January 1, 2002.]***~~ ***<u>[Repealed effective October 1, 2003.]</u>***

(a) No public utility subject to the jurisdiction of the Arkansas Public Service Commission shall commence construction of any power-generating facility to be located outside the boundaries of this state without the express written approval of the Arkansas Public Service Commission.

(b) Any public utility proposing such construction shall render adequate written notice to the commission of its intent in order that the commission may conduct any germane inspection,

investigation, public hearing, or take any other action deemed appropriate by the commission.

(c) Failure on the part of any public utility to obtain prior approval of the commission, as established in this section, shall constitute grounds for disallowance, by the commission, of all costs and expenses associated with the construction and subsequent operation of the facility when computing the utility's cost of service for purposes of any ratemaking proceedings.

(d) Any electric utility which does not own in whole or part another electric utility and which is not owned in whole or part by a holding company and which derives less than twenty-five percent (25%) of its total revenues from Arkansas customers is exempt from the provisions of this section.

Arkansas Code Annotated 23-18-511 is amended to read as follows:

Application for certificate - Contents generally. ***~~[Effective January 1, 2002.]~~*** ***<u>[Effective October 1, 2003.]</u>***

An applicant for a certificate shall file with the Arkansas Public Service Commission a verified application in such form as the commission may prescribe and containing the following information:

(1) A general description of the location and type of the major utility facility proposed to be built;

(2) A general description of any reasonable alternate location or locations considered for the proposed facility.

(3) Except in the case of a major utility facility as defined by § 23-18-503(2)(A), a statement of the need and reasons for construction of the facility.

(4) Except in the case of a major utility facility as defined by § 23-18-503(2)(A), a statement of the estimated costs of the facility and the proposed method of financing the construction of the facility.

(5)(A) Except in the case of a major utility facility as defined by § 23-18-502(2)(A), a general description of any reasonable alternate methods of financing the construction of the facility;

(B) A description of the comparative merits and detriments of each alternate financing method considered;

(C) If, at the time of filing of the application, the federal income tax laws and state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed facility for the applicant by a state financing agency, the application shall also include a discussion of the merits and detriments of financing the facility with such bonds.

(6) An analysis of the projected economic or financial impact on the applicant and the local community where the facility is to be located as a result of the construction and the operation of the proposed facility;

(7) Except in the case of a major utility facility as defined by § 23-18-502(2)(A), an analysis of the estimated effects on energy costs to the consumer as a result of the construction and operation of the proposed facility.

(8)(A) An exhibit containing an environmental impact statement, which shall fully develop the four (4) factors listed in subdivision (8)(B) of the section, treating in reasonable detail such

considerations, if applicable, as the proposed facility's direct and indirect effect on the ecology of the land, air and water environment, established park and recreational areas, and on any sites of natural, historic, and scenic values and resources of the area in which the facility is to be located, and any other relevant environmental effects.

(B) The environmental impact statement shall set out:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects which cannot be avoided;

(iii) A description of the comparative merits and detriments of each alternate location or for generating plants, the energy production process considered, and a statement of the reasons why the proposed location and production process were selected for the facility; and

(iv) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(9) In the case of a major utility facility as defined by § 23-18-503(2)(B), the effect of the proposed facility on competition for the sale of electric generation in the state or region; and

(10) Such other information of an environmental or economic nature as the applicant may consider relevant or as the commission may be regulation or order require.

Arkansas Code Annotated 23-18-519(b) is amended to read as follows:

Decision of commission - Modifications of application. ~~[Effective January 1, 2002.]~~ <u>[Effective October 1, 2003.]</u>

(a) The Arkansas Public Service Commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the location, financing, construction, operation, or maintenance of the major utility facility as the commission may deem appropriate.

(b) The Arkansas Public Service Commission may not grant a certificate for the location, financing, construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the commission, unless it shall find and determine:

(1) Except in the case of a major utility facility as defined by § 23-18-503(2)(A), the basis of the need for the facility;

(2) Except in the case of a major utility facility as defined by § 23-18-503(2)(A), that the facility will serve the public interest, convenience, and necessity;

(3) The nature of the probable environmental impact of the facility;

(4) That the facility represents an acceptable adverse environmental impact, considering the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal, and the various alternatives, if any, and other pertinent considerations;

(5) The nature of the probable economic impact of the facility;

(6) Except in the case of a major utility facility as defined by § 23-18-503(2)(A), that the facility financing method either as proposed or as modified by the commission represents an acceptable economic impact, considering economic conditions and the need for and cost of additional public utility services;

(7) In the case of an electric transmission line, that such facility is not inconsistent with known plans of other electric systems serving the state, which plans have been filed with the commission;

(8) In the case of a gas transmission line, that the location of the line will not pose an undue hazard to persons or property along the area to be traversed by the line;

(9) In the case of a major utility facility, as defined by § 23-18-503(2)(B), the effect of the proposed facility on competition for the sale of electric generation in the state or region; and

(10) That the location of the facility as proposed conforms as closely as practicable to applicable state, regional, and local laws and regulations issued thereunder, except that the commission may refuse to apply all or any part of any regional or local law or regulation if it finds that, as applied to the proposed facility, that law or regulation is unreasonable restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions.

(c)(1) If the commission determines that the location or design of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that the municipalities, counties, and persons residing therein affected by the modification shall have been given reasonable notice thereof, if the persons, municipalities, counties have not previously been served with notice of the application.

(2) If the commission requires, in the case of a transmission line, that a portion thereof shall be located underground in one (1) or more areas, the commission, after giving appropriate notice and an opportunity to be heard to affected ratepayers, shall have the power and authority to authorize the adjustment of rates and charges to customers within the areas where the underground portion of the transmission line is located in order to compensate for the additional costs, if an, of such underground construction.

(d)(1) If the commission determines that financing of all or part of the proposed facility should be modified, it may condition its certificate upon the modification.

(2) If at the time of filing of the application, or within sixty (60) days thereafter, the federal income tax laws and the state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed facility for the applicant and if the commission determines that financing the facility with such tax-exempt bonds would be in the best interests of the people of the state, the commission, after giving appropriate notice and an opportunity to be heard to the parties, shall have the power and authority to require by order or regulation that the facility be financed in such manner as may be provided elsewhere by law.

(e) A copy of the decision and any order issued therewith shall be served upon each party within sixty (60) days after the conclusion of each hearing held under this subchapter.